IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1926 OF 2005

Union of India ..Petitioner.

Vs.

Renuka Ambadas Malve & Ors. ..Respondents.

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Mr. Suresh Kumar for the Petitioner.
Ms. Geeta Mulekar for Respondent Nos.1 to 4.

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CORAM : DR.D.Y.CHANDRACHUD, J.

12th April, 2006.

ORAL ORDER:

1. Rule, returnable forthwith. Counsel appearing on behalf of the Respondents waives service. By consent taken up for hearing and final disposal.

2. One Ambadas Shekappa Malve was working as an Assistant Sub-Inspector in the R.P.F. Department of the Central Railway at Kurduwadi. He expired on 13th November, 1998 while in service, leaving behind him the following legal heirs :

1. Kumari Sangita Ambadas Malve Daughter of first wife

Age – 19 years

2. Smt. Renuka Ambadas Malve — Wife/ 2nd wife
   Age - 32 years

3. Sachin Ambadas Malve — Son of 2nd wife
   Age – 12 years

4. Kumari Punam Ambadas Malve — Daughter of 2nd wife
   Age – 8 years

5. Kumar Kashinath Ambadas Malve — Son of 2nd wife
   Age – 5 years

3. The Fifth Respondent is a daughter of the deceased born from his first wife. The first wife had predeceased the employee. Thereupon he had married again and the First Respondent is the second wife. The Second, Third and Fourth Respondents are all minors, children born to the First Respondent from the wedlock. On the death of Ambadas, the First Respondent filed Civil Misc. Application 86 of 1999 in the Court of the Civil Judge, Senior Division, Solapur for obtaining a Succession certificate. The Succession certificate came to be granted to the

First Respondent for and on behalf of herself and the minor children to the extent of 4/5th of an amount of Rs.2,25,405/- receivable on account of the terminal dues of the deceased. The Petitioner filed a review application before the Civil Judge, Senior Division, Solapur which came to be dismissed as not being maintainable. Thereupon these proceedings have been instituted.

4. Rule 75 of the Railway Pension Rules, 1993 lays down provisions for the grant of family pension to the legal heirs of a deceased employee. Under sub rule (6) of Rule 75 the period for which family pension is payable is until the attainment of the age of 25 years in the case of a son or, in the case of an unmarried daughter, until she attains the age of 25 years or until she gets married, whichever is earlier. Sub rule (7) of Rule 75 inter alia deals with a situation where a family pension is payable to more widows than one and it also deals with a situation where inter alia a widow of the deceased employee expires. In so far as is material sub rule (7) of Rule 75 provides as follows :

> "(7)(i)(a) Where the family pension is payable to more

widows than one, the family pension shall be paid to the widows in equal shares.

(b) On the death of a widow, her share of the family pension, shall become payable to her eligible child:

Provided that if the widow is not survived by any child, her share of the family pension shall not lapse but shall be payable to the other widows in equal share, or if there is only one such other widow, in full, to her.

(ii) Where the deceased railway servant or pensioner is survived by a widow but has left behind eligible child or children from another wife who is not alive, the eligible child or children shall be entitled to the share of family pension which the mother would have received if she had been alive at the time of the death of the railway servant or pensioner:

Provided that on the share or shares of family

pension payable to such a child or children or to a widow or widows ceasing to be payable, such share of shares shall not lapse but shall be payable to the other widow or widows or the other child or children otherwise eligible .... equal shares, or if there is only one widow or child, in full, to such widow or child."

5. Sub rule (7) of Rule 75, therefore, shows that (i) Where family pension is payable to more than one widow of a deceased employee, it shall be paid to each of them in equal shares; (ii) On the death of a widow, the share of family pension payable to her becomes payable to her eligible child; (iii) If a widow is not survived by any child, her share of the pension does not lapse, but is to be paid to other widows in equal shares; (iv) When a deceased employee is survived by a widow and has also left behind an eligible child or children from another wife, who is not alive, such children would be entitled to a share which their mother would have received if she were to be alive; (v) On the share of family pension payable to such a child or to such children or to a widow or widows ceasing to be payable, the share does not lapse, but would be payable to the other widow or other child eligible in equal shares.

6. The Supreme Court has held in **Jodh Singh v. Union of India** (AIR 1980 SC 2081) that a special family pension is payable to the widow on the death of an employee. The pension is not payable during the life time of the employee. Hence, what is not paid during the life time of the deceased is something on which he has no power of disposition. Hence, special family pension cannot form a part of the estate of the deceased and it cannot therefore be disposed of by testamentary disposition.

7. In these circumstances, the manner in which the family pension shall be shared or distributed between the heirs of a deceased employee is defined by and shall be governed by the provisions contained in that behalf in Rule 75 of the Pension Rules. In view of this position, the Petition shall have to be allowed.

8. On behalf of the Petitioners, it has been stated that the Fifth Respondent has attained the age of 25 years on 31st May, 2005 after which date she is not eligible to receive the family pension. Hence, it has been submitted that her share will not lapse in terms of the provisions contained in Rule 75 and that orders

have already been passed for distributing the share that was payable to the Fifth Respondent prior to her attainment of the age of 25 years to Respondent No.1. Until the date on which the Fifth Respondent attained the age of 25 years, whatever is the balance that is due and payable, shall be distributed in equal shares half going to the Fifth Respondent and half to Respondent No.1. Rule is made absolute in terms of prayer clause (a). The Petition shall accordingly stand disposed of in terms of the aforesaid directions. No costs.